IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7794 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHADBHAI AMRUTBHAI BHANDARI

Versus

STATE OF GUJARAT

Appearance:

MS SN QURESHI FOR MR MM TIRMIZI for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 10.01.2003 passed by the District Magistrate, Valsad, against him,

in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 10.01.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration the fact that five offences came to be registered against the petitioner on 2.8.2001, on 28.12.2001, again on 28.12.2001, on 25.10.2002 and on 31.10.2002 under Sections 66(1)(b), 65(a)(e), 116(2) and 81 of the Bombay Police Act, and it is alleged that in all those occasions, the petitioner was found in possession of foreign liquor. The detaining authority also took into consideration in-camera statements recorded by sponsoring authority on 30.11.2002 and verified on 2.1.2003 revealing criminal tendency of the petitioner and one statement disclosing unreported incident occurred one and half months before recording of the statement while other statement reveal unreported incident occurred two to four months prior to recording of the statements of the witnesses. From the above material, the order impugned was passed by the detaining authority.

3. Learned Advocate Ms. S.N.Qureshi for Mr.M.M. Tirmizi for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that this petition can be disposed of on the ground of delay in passing the order of detention. The chronology of events indicate that out of five crimes registered against the petitioner, the last offence came to be registered on 31.10.2002. In-camera statements recorded on 30.11.2002 by the sponsoring authority reveal unreported incident occurred in one case before one and half months while in the other before two to four months recording of the statements. The statements came to be verified by the detaining authority on 2.1.2003 and the order came to be passed on 10.1.2003. The chronology of events invariably reflect delay in passing of the order on the part of the detaining authority. If the last date of registration of the crime is taken into consideration, the order is passed after three months of such date while unreported incidents are also either prior to 31.10.2002 or near about the same date. Therefore, it clearly

appears that there is delay in passing the order which vitiates the order impugned. The facts of the case are squarely covered by decision of the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC 656 and a decision of this Court in the matter ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. The order impugned in this petition therefore is required to be quashed on the is ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Valsad, on 10.10.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

6. Learned Advocate for the petitioner makes a statement that the petitioner is transferred to Bharuch Jail. Office is directed to transmit the writ to Bharuch Jail.

(J.R. Vora, J.)

p.n.nair